

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and the
STATE OF WISCONSIN,

Plaintiffs,

v.

NCR CORPORATION, *et al.*

Defendants.

Civil Action No. 1:10-cv-910

DECLARATION OF MICHAEL K. O'BRYAN

I, Michael K. O'Bryan, declare as follows:

1. I am Chief of the Engineering and Technical Services Division of the Detroit District, United States Army Corps of Engineers.

2. I have worked for the Detroit District Army Corps of Engineers since 1971. I have held positions of Construction Project Engineer, Assistant and Acting Area Engineer, Construction Management Engineer, Resident Engineer, Chief of Emergency Management Branch, Chief of Construction Branch, Assistant Chief of Construction-Operation Division, Assistant Chief of Engineering and Technical Services Division, and Chief of Engineering and Technical Services Division.

3. As a Construction Management Engineer, I assisted the Kewaunee Area Office with the administration of contracts for the navigation dredging of the Green Bay Harbor, Wisconsin navigation project. As Chief of Construction Branch, I was responsible for overseeing several contracts for dredging of the Green Bay project including duties as a Contracting Officer Representative. As Assistant Chief of Construction and Engineering and Technical Services

Division, I oversaw and was involved in budgeting and execution decisions regarding navigation dredging of the Green Bay project.

4. I am generally familiar with the Green Bay Harbor, Wisconsin navigation project, which the Rivers and Harbors Act of 1866 authorized. The navigation channel begins at the City of De Pere, Wisconsin on the Fox River and ends eleven and one-quarter miles into Green Bay. The total length of the navigation channel is approximately 19 miles. The portion of the channel from the City of De Pere to the Fort Howard Turning Basin, a distance of approximately three and one-half miles, was last maintained for commercial navigation in the late 1960s. The remaining 15 and one-half miles are maintained on a regular basis.

5. In this declaration, I discuss the maintenance of the navigation channel and disposal of the dredged sediment including quantity and disposal location and the costs of this maintenance including construction of dredged material confined disposal facilities (“CDF”) to contain the dredged sediment.

6. For over 140 years, the Corps of Engineers has maintained a navigation channel at Green Bay Harbor, Wisconsin for commercial navigation. The actively maintained portion of this channel ranges in width from 300 feet to 150 feet and in depth from 26 feet and 20 feet. Portions of the channel are dredged regularly, typically each year. Detroit District’s records establish that over 17 million cubic yards of sediment and excavated material were dredged from 1957 to 2009 at a cost, in 2010 dollars, of \$111,882,524. A compilation of those sediment volume and cost figures was presented in the November 2010 Corps report entitled “Phase II Report, Dredged Materials Management Plan Study, Green Bay Harbor, Wisconsin, Volume I and II.” A true and correct copy of excerpts of that report is attached as Attachment 1 to this Declaration. Another 536,119 cubic yards, at a cost of \$8,433,292, has been and will be dredged

between 2010 and 2013. That includes work under a recently awarded \$1,741,000 contract for Green Bay Harbor maintenance dredging that will be performed between May and August 2013. A true and correct copy of a Corps of Engineers press release regarding that contract award is attached as Attachment 2 to this Declaration.

7. Originally, the dredged sediment removed from the navigation channel was disposed in open water, usually in Green Bay. In 1966, the Detroit District began confining dredged sediment in CDFs, first at the Bayport facility, later at the Renard Island facility, and then again at the Bayport facility. Since early 1975, the placement of all dredged sediment has been in CDFs.

8. The Bayport facility is currently owned and operated by Brown County and is used for disposal of sediment dredged by the Corps and its contractors in accordance with a Memorandum of Agreement signed June 4, 2001 under the authority of Section 217(c) of the Water Resources Development Act of 1996, Public Law 104-303.

9. The Renard Island facility last received dredged sediment from navigation dredging in 1996.

10. Brown County, Wisconsin currently owns the land where the Bayport CDF is situated and the portion of the lakebed beneath where the Renard Island CDF was built. Under the local cooperation agreements between the Corps of Engineers and Brown County, the Corps is responsible for operating and maintaining both CDFs until filled, performing final site preparation, and then turning over the maintenance responsibilities to Brown County. Brown County is responsible for the post-closure long-term care and maintenance of those facilities.

11. Ongoing site preparation for turnover of the maintenance of the Renard Island facility to Brown County has required transferring material from the Bayport facility to Renard

Island to use as cover material. Completion of site preparation at Renard Island is expected in 2015, allowing for turnover of maintenance responsibilities to Brown County along with the responsibility for closure of the Renard Island facility under the WDNR's solid waste management regulations.

12. Site preparation at the Renard Island facility requires extensive coordination with the State of Wisconsin and Brown County. The Detroit District has already incurred design and construction costs totaling approximately \$2.9 million. The Corps recently commenced a procurement process for certain final closure work at the Renard Island CDF, estimating the construction costs at between \$1 million and \$5 million. A true and correct copy of the planning announcement for that procurement is attached as Attachment 3 to this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Executed on: May 30, 2013

/S/ Michael K. O'Bryan
Michael K. O'Bryan

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Declaration to be served on the following counsel of record by the Court's Electronic Case Filing system:

Mary Rose Alexander
Latham & Watkins LLP
mary.rose.alexander@lw.com

Thomas Armstrong
von Briesen & Roper SC
tarmstro@vonbriesen.com

Paul Bargren
Foley & Lardner LLP
pbargren@foley.com

Linda E. Benfield
Foley & Lardner LLP
lbenfield@foley.com

Dennis P. Birke
DeWitt Ross & Stevens SC
db@dewittross.com

Garrett L. Boehm, Jr.
Johnson & Bell, Ltd.
boehmg@jbltd.com

Steven P. Bogart
Reinhart Boerner Van Deuren SC
sbogart@reinhartlaw.com

Michael P. Carlton
von Briesen & Roper SC
mcarlton@vonbriesen.com

Evan R. Chesler
Cravath Swaine & Moore LLP
echesler@cravath.com

Francis A. Citera
Greenberg Traurig LLP
citeraf@gtlaw.com

Marc E. Davies
Greenberg Traurig LLP
daviesm@gtlaw.com

David R. Erickson
Shook Hardy & Bacon LLP
derickson@shb.com

S. Todd Farris
Friebert Finerty & St. John SC
stf@ffsj.com

Patrick J. Ferguson
Latham & Watkins LLP
patrick.ferguson@lw.com

Charles Fried
fried@law.harvard.edu

Sandra C. Goldstein
Cravath Swaine & Moore LLP
sgoldstein@cravath.com

Thomas R. Gottshall
Haynsworth Sinkler Boyd PA
lgantt@hsblawfirm.com

Eric W. Ha
Sidley Austin LLP
eha@sidley.com

Scott W. Hansen
Reinhart Boerner Van Deuren SC
shansen@reinhartlaw.com

William H. Harbeck
Quarles & Brady LLP
william.harbeck@quarles.com

Cynthia R. Hirsch
Wisconsin Department of Justice
hirschcr@doj.state.wi.us

Margaret I. Hoefer
Stafford Rosenbaum LLP
mhoefer@staffordlaw.com

Caleb J. Holmes
Greenberg Traurig LLP
holmesc@gtlaw.com

Philip C. Hunsucker
Hunsucker Goodstein PC
phunsucker@hgnlaw.com

Peter C. Karegeannes
Quarles & Brady LLP
peter.karegeannes@quarles.com

Paul G. Kent
Stafford Rosenbaum LLP
pkent@staffordlaw.com

Gregory A. Krauss
Gregory Krauss pllc
gkrauss@krausspllc.com

Linda R. Larson
Marten Law PLLC
llarson@martenlaw.com

Vanessa A. Lavelly
Cravath Swaine & Moore LLP
vlavelly@cravath.com

Susan E. Lovern
von Briesen & Roper SC
slovern@vonbriesen.com

Anne E. Lynch
Hunsucker Goodstein PC
alynch@hgnlaw.com

Kevin J. Lyons
Davis & Kuelthau SC
klyons@dkattorneys.com

Meline G. MacCurdy
Marten Law
mmaccurdy@martenlaw.com

David G. Mandelbaum
Greenberg Traurig LLP
mandelbaumd@gtlaw.com

Bradley M. Marten
Marten Law
bmarten@martenlaw.com

Allison E. McAdam
Hunsucker Goodstein PC
amcadam@hgnlaw.com

Darin P. McAtee
Cravath Swaine & Moore LLP
dmcatee@cravath.com

Stephen F. McKinney
Haynsworth Sinkler Boyd PA
smckinney@hsblawfirm.com

Heidi D. Melzer
Melzer Law, LLC
hmelzer@melzerlaw.com

Elizabeth K. Miles
Davis & Kuelthau SC
emiles@dkattorneys.com

William J. Mulligan
Davis & Kuelthau SC
wmulligan@dkattorneys.com

Omid H. Nasab
Cravath Swaine & Moore LLP
onasab@cravath.com

Kelly J. Noyes
von Briesen & Roper SC
knoyes@vonbriesen.com

Nancy K. Peterson
Quarles & Brady LLP
nancy.peterson@quarles.com

Thomas M. Phillips
Reinhart Boerner Van Deuren SC
tphillip@reinhardtlaw.com

Ian A.J. Pitz
Michael Best & Friedrich LLP
iapitz@michaelbest.com

David A. Rabbino
Hunsucker Goodstein PC
drabbino@hgnlaw.com

Ronald R. Ragatz
DeWitt Ross & Stevens SC
rrr@dewittross.com

Kathleen L. Roach
Sidley Austin LLP
kroach@sidley.com

Megan A. Senatori
DeWitt Ross & Stevens SC
ms@dewittross.com

Adam B. Silverman
Greenberg Traurig LLP
silvermana@gtlaw.com

M. Andrew Skierawski
Friebert Finerty & St. John SC
mas@ffsj.com

Sarah A. Slack
Foley & Lardner LLP
sslack@foley.com

Margaret R. Sobota
Sidley Austin LLP
msobota@sidley.com

Arthur A. Vogel, Jr.
Quarles & Brady LLP
arthur.vogel@quarles.com

Anthony S. Wachewicz, III
City of Green Bay
tonywa@ci.green-bay.wi.us

James P. Walsh
Appleton City Attorney
jim.walsh@appleton.org

Ted A. Warpinski
Friebert Finerty & St John SC
taw@ffsj.com

Ted Waskowski
Stafford Rosenbaum LLP
twaskowski@staffordlaw.com

Evan B. Westerfield
Sidley Austin LLP
evanwesterfield@sidley.com

Richard C. Yde
Stafford Rosenbaum LLP
ryde@staffordlaw.com

Dated: May 31, 2013

s/ *Randall M. Stone*